

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWELFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 11912 of 2002

Between:

1. M/s. A.S.Rao, Represented by its Proprietor,
Anna Srinivasa Rao, S/o.Rama Rao, Occ.Business, Shop.No.4

2. M/s. Vijaya Matching Centre, Represented by its
Proprietor Medam Srinivasa Rao, S/o.Chennakesava Rao
Occ. Business, Shop No.22

3. M/s.Sai Srinivasa Handlooms, Represented by
its Proprietrix Smt. A.Saraswathi, W/o.Subba Rao
Occ. Business, Shop No.21.

4. M/s.Sai Ganesh Silks, Represented by its
Managing Partner Chepuri Venkata Naga Ganesh Kumar,
S/o.Venkata Subba Rao,
Occ. Business, Shop No.17.

5. M/s.K.R.Tiffin Centre, Represented by its
Proprietor, M.David Raju, S/o.Subba Rao
Occ. Business, Shop.No.1

(All the petitioners' shops are situated in V.H.R.Complex
Besent Road, Governorpet, Vijayawada)

..... PETITIONERS

AND

The Vijayawada Municipal Corporation, Represented
by its Commissioner, Vijayawada, Krishna District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order, or direction particularly one in the nature of Writ of Mandamus, declaring the action of the respondent in seeking to evict the petitioners forcibly from their respective shop premises or seal of the same forcibly without any notice as also the oral demands to pay 6 months advance rent as deposit and 18 months rent as penalty for effecting the mutation of leases of the respective petitioners in the place of their erstwhile allottees is arbitrary, illegal and violative of the principles of natural justice.

Counsel for the Petitioner: MR.P.PRABHAKAR RAO

**Counsel for the Respondent: MR.T.S.VENKATA RAMANA, SC FOR
VIJAYAWADA MUNICIPAL CORPORATION**

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.11912 OF 2002

ORDER:

All the petitioners are residents of Vijayawada City. They state that they have been carrying on business in the shops in V.H.R.Complex, belonging to Vijayawada Municipal Corporation (for short, the Corporation). Admittedly they are not the original licensees or allottees. According to petitioners, as original allottees, to whom shops were allotted on lease/licence could not carry on their business due to financial difficulties, petitioners have taken over the business allegedly because they are business associates. The petitioners also alleged that the officials of the Corporation have knowledge of the change, but also demanded to pay eighteen months rent as mutation charges from the petitioners. Further, it is alleged that on 1.7.2002 officials of the respondent visited the shops and threatened to evict the petitioners forcibly. Therefore, they filed the Writ Petition seeking a Writ of Mandamus declaring the action of the respondent in seeking to evict the petitioners forcibly as illegal and arbitrary

This Court admitted the Writ Petition on 3.7.2002 and passed orders in W.P.M.P.No.14709 of 2002 staying eviction of the petitioners. The Corporation filed W.V.M.P.No.1136 of 2004 seeking to vacate the interim order dt.3.7.2002. When the miscellaneous applications are listed before this Court, with the consent of the

learned counsel for the parties, the matter was heard finally and is being disposed of at the interlocutory stage.

The Commissioner of Vijayawada Municipal Corporation filed a counter affidavit denying the various petition averments. It is stated that petitioners 1 to 5 are not originally lessees. The Corporation passed Resolution No.387, dt.24.1.2001 to collect eighteen months rent as mutation fee and six months rent as security deposit. Under condition No.13 of the lease agreement entered between the allottee and the Corporation, the allottee should not sublet the shop allotted. The original allottees have violated the conditions and hence they were informed that if the mutation fee is not paid shops will be locked as per Condition No.8 of the lease deed. All the petitioners are sub-lessees and therefore the Corporation is entitled to take back the shops. It is also stated that even if the original lessee is not able to run the business, the lease deed does not permit the petitioners to take over the business without obtaining prior permission of the Corporation. It is also stated that when the mutation amount was demanded, the amounts were paid by petitioners by way of cheques. It is now brought to the notice of this Court that those cheques were not en-cashed.

During the course of arguments, learned Standing Counsel for the respondent Corporation has placed before this Court a judgment of this Court in Writ Petition No.23815 of 2002 and batch, dt.1.8.2003. The facts therein are also similar. This Court, having regard to Municipal Corporation of Hyderabad (Acquisition and Disposal of Immovable Property) Rules, 1970 (for short, the Rules) as well as various terms of the lease deed in Form III(A) in Schedule-III appended to the Rules laid down that a original lessee cannot sublet the shop allotted to him/her and that in such an event, it is always open to the Corporation to take back the possession and put to fresh auction. However, having regard to the circumstances that the original lessees were not able to run the business, this Court gave one more opportunity to take over the shop. The directions issued by this Court read as under:

The Writ Petitions are devoid of merit and are liable to be dismissed. However, it is made clear that Corporation in law is duty bound to conduct public auction to lease out the shops if original lessee does not want to continue, and if original lessee still wants to continue business putting an end to all illegal obligations which may arise under alleged agreements entered into by original lessee, option shall be given to original lessee whether to continue in shop or not. If for any reason original lessee does not want to continue, such shops shall be put to auction. It is open to the Corporation to evict the transferees of the shops forthwith.

In this case also, the petitioners obtained sub-lease from original lessees and, therefore, they have no right that can be enforced under Article 226 of the Constitution of India, especially having regard to the terms of lease agreement between the Corporation and the original lessee.

The Writ Petition is dismissed in terms of the above order. No costs.

(V.V.S.RAO, J)

12.8.2004

bnr

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Vijayawada Municipal Corporation,
Vijayawada, Krishna District.
2. 2 CD copies.